

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re

JAMES JOEL HOLMAN and CANDICE
EVANGELINE HOLMAN,

Debtors.

Case No. 14-35381-rld7

Chapter 7

DWIGHT and LAURA DANIELS,
husband and wife.

Plaintiffs.

JAMES JOEL HOLMAN and CANDICE
EVANGELINE HOLMAN,

Defendants.

Adversary Proceeding No. 14-03285-rld

Plaintiffs/Appellees Dwight Daniels and Laura Daniels (“Daniels”) move to strike portions of Defendants/Appellants James Joel Holman (“Holman”) designation of record. Specifically, the Daniels move to strike the second item in the designation – “item designated by the parties is [sic] Motion to Amend Findings and Exhibit 1 to the motion.”

FACTUAL BACKGROUND

Defendants' motion involves a trial that took place on August 13, 2015 between Dwight and Laura Daniels as Plaintiffs and James Joel and Candice Evangeline Holman as Defendants. The Daniels asserted exceptions to discharge claims against the Holmans under 11 USC §523(a)(2)(A) and 523(a)(2)(B). Prior to trial, Summary Judgment was entered in favor of Mrs. Holman on the Daniels' 523(a)(2)(A) claim. After the trial, judgment was entered on behalf of Plaintiffs excepting Mr. Holman's debt under 523(a)(2)(B) and entering judgment on behalf of Defendant Holman on the Plaintiffs' claim under 523(a)(2)(A) and in favor of Candice Holman

1 under 523(a)(2)(B). Pursuant to the Rules of the US Bankruptcy Appellate Panel, Holman has
2 now filed a Designation of Record. Within the Designation of Record a number of items that were
3 before the Bankruptcy Court and Holmans' post trial Motion to Amend Findings and exhibit to
4 the motion which includes an exhibit that was not offered during litigation or the trial even though
5 it was available to Holman at all times material.

6 **POINTS AND AUTHORITIES**

7 Items that were not before the Bankruptcy Court generally will not be allowed unless they
8 pertain to mootness that arose after the order on appeal. *See In re Myrvang* 232 F.3d 1116, 1119
9 (9th Cir, 2000); *Kirshner v. Uniden Corp. of America*, 842 F.2d 1074, 1077 (9th Cir, 1988).

10 Papers not filed with District Court or admitted into evidence by that Court are not
11 part of the clerk's record and cannot be part of the record on appeal. See *United*
12 *States v. Walker*, 601 F.2d 1051, 1054-55 (9th Cir, 1979) (Affidavits submitted
13 subsequently were not part of the evidence presented to the District Court" would
14 not be considered on appeal); *Panaview Door & Window Company v. Reynolds*
15 *Metals Company*, 255 F.2d 920, 922 (9th Cir, 1958) (striking from record an exhibit
16 that had been attached to appellant's Trial Court Memorandum of Points and
17 Authorities and a document that had been marked for identification, neither of
18 which have been received in evidence); *Watson v. Rhode Island Insurance*
19 *Company*, 196 F.2d 254, 255-256 (5th Cir. 1952) (granting motion to strike
20 documents that were tendered as exhibits to brief on appeal but had not been offered
21 in evidence below;).

22 *Id.* Any documents submitted to a court after the ruling that is challenged on appeal should be
23 stricken from the record on appeal. See *United States v. Walker*, 601 F.2d at 1055 ("we are here
24 concerned only with the record before the trial judge when his decision was made."); *Heath v.*
25 *Helmick*, 173 F.2d 156, 156-157 (9th Cir. 1949) (striking from record on appeal papers that were
26 filed in District Court after judgment from which appeal was taken; "the cause must be tried here
upon the record made at the original trial" *Id.*). Contrary to Oregon law, Holman is attempting to
put in the appeal record, items that were not before the Bankruptcy Court at trial including a Motion
to Amend Findings and an exhibit to his Motion to Amend Findings which is evidence that is
neither newly found nor newly discovered.

Based on the foregoing, the Daniels request that Court strike the Motion to Amend Findings and Exhibit 1 to the motion from Holmans' Designation of Records.

DATED: October 12, 2015.

SLINDE NELSON STANFORD

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CERTIFICATE OF SERVICE

I hereby certify that I served the attached **APPELLEES' MOTION TO PARTIALLY STRIKE APPELLANTS' DESIGNATION OF RECORD** on the following person(s) on the date indicated below:

Paul B. Heatherman
Law Offices of Paul Heatherman PC
250 NW Franklin Ave, #402
Bend, OR 97701
Of Attorneys for Debtors-Defendants

By the following indicated method(s):

- By **emailing** full, true, and correct copies thereof to say attorney to the email address noted above, which is the last known email address for said attorney, on the date set forth below.
- By notice of electronic filing using the PACER ECF filing system.
- By causing full, true and correct copies thereof to be **mailed** to the attorney(s) at the attorney(s) last-known office address (as) listed above on the date set forth below.

DATED: October 12, 2015.

SLINDE NELSON STANFORD

By: /s/ R. Hunter Bitner II
R. Hunter Bitner, II, OSB No. 011146
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